Supreme Court, U.S.
FILED

OCT 24 2001

OFFICE OF THE CLERK

No. 11253

In The
Supreme Court of the United States

JERMAINE S. DOSS,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Defendant.

On Petition For A Writ Certiorari To The
Virginia Supreme Court

PETITION FOR WRIT OF CERTIORARI

CHESTER L. SMITH, JR.
Counsel of Record

5441 Virginia Beach Blvd.
Suite 110
Virginia Beach, VA 23462
(757) 490-3181 Attorney for
Petitioner

27pp

QUESTIONS PRESENTED

1. Whether the Appellant was denied his due process rights of an opportunity to be heard by the Virginia Court of Appeals' refusal to transfer the Appellant's petition for an appeal to the Virginia Supreme Court in a timely manner, thereby denying the Appellant the right to have this matter reviewed in the proper forum?

2. Whether the trial judge erred by giving no consideration to the fact that the due process right to be heard necessarily embodies a right to file motions to present a defense and raise relevant issues, including a motion to subpoena prior counsel in the latter's office to discuss a murder for hire case against the Defendant before the Defendant was directly indicted by the grand jury?

3. Whether the Federal Rule II(C)(1)(a) of the Federal Rules of Civil Procedure should be disregarded when the attorney withdrew his pleading within ten (10) days of the filing, and no hearing was ever heard on the matter?

RULE 14.1(b) LISTING

Curtis T. Brown, Esquire, Counsel of Record, 555 Fenchurch Street, Suite 306, Norfolk, Virginia 23510, (757) 622-5444.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

RULE 14.1(b) LISTING ii

TABLE OF AUTHORITIES iv

OPINION AND ORDER BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 5

THE VIRGINIA COURT OF APPEALS SHOULD HAVE VACATED AND DISMISSED THE TRIAL JUDGE'S ORDER OF MAY 23, 2000, AS THE TRIAL JUDGE WAS WITHOUT JURISDICTION TO AWARD SACTIONS IN A CIVIL CONTEXT 7

THE QUESTIONS PRESENTED ARE IMPORTANT 8

CONCLUSION 12

APPENDIX . . . . . App. 1

TABLE OF AUTHORITIES

Page

CASES

Cardinal Holding Company v. Deal, 258 Va. 623, 522 S.E.2d 614, 620 (1999) 11

Holt et al. v. Virginia, 381 U.S. 131, _____ (1965) 9

In re: Murchison, 349 U.S. 133, 136, ( ) 9

STATUTES AND RULES

28 U.S.C § 1331 1

Federal Rule II(C)(1)(a) of the Rules of Civil Procedure 10

Rule 3A:9(3) of the Rules of the Virginia Supreme Court 10

Rule 5:17(a)(1) of the Rules of the Virginia Supreme Court 8

U. S. Digest Lawyer's Edition § 46.3 of Criminal Law 1

Virginia Code § 8.01-271.1 . . . . . 5, 6, 7, 10, 11

Virginia Code § 8.01-677.1 6

Virginia Code § 15.2-1627(A) 11

West Federal Practice Digest 2d § 268(1) of Constitutional Law 1

PETITION FOR WRIT OF CERTIORARI

Curtis T. Brown respectfully petitions for the issuance of a writ certiorari to review the judgment of the Supreme Court of the State of Virginia in this case.

OPINIONS AND ORDER BELOW

The opinions of the Virginia Court of Appeals (App. 5-7) and the opinions of the Virginia Supreme Court (App. 8-9) are unreported.

JURISDICTION

The Virginia Supreme Court entered its judgment on July 27, 2001 (App. 9). The jurisdiction of this Court is invoked under 28 U.S.C. § 1331.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Digest Lawyer's Edition, § 46.3 of Criminal Law provides that "due process and the Sixth Amendment guarantee a defendant summarily charged in a state court with contempt an opportunity to be heard in his defense and to be represented by counsel."

West Federal Practice Digest 2d, § 268(1) of Constitutional Law provides that the "due process right to be heard necessarily embodies a right to file motions an pleadings essential to present claims and raise relevant issues, including motions to subpoena material witnesses." It further provides that "a fair trial in a fair tribunal is a basic requirement of due process." Moreover, it states "in the absence of use of improper language, an attorney cannot

consistently with due process be sanctioned for filing motions to subpoena witnesses." Furthermore, it provides "a statement summarily punishing an attorney for sanctions because of his filing a motion to subpoena witnesses cannot, as against due process attacks, be upheld...."

STATEMENT OF THE CASE

A. Material Facts

The trial judge refused to recuse himself from the case, even though Curtis T. Brown, Esquire (hereinafter referred to as "Appellant") insisted that the trial judge was against him. (Tr. 4). The trial judge had Jermaine Doss (hereinafter referred to as "Defendant") brought over to the Court only to send him back proclaiming that the trial judge did not realize that Norman Thomas, Esquire, (hereinafter referred to as "Commonwealth Attorney") was seeking to have sanctions. (Tr. 5). The Defendant could have corroborated the five (5) hour meeting in December 1999 with the Appellant, in which the conversations and letter between the Commonwealth Attorney and prior counsel for Nathaniel McGhee (hereinafter referred to as "Co-Defendant"), were discussed. Attorney Joseph Lindsey was the first Court-Appointed Attorney for the Co-Defendant. Prior to Attorney Lindsey visiting the Co-Defendant in the Norfolk City Jail, he received a call from the Commonwealth Attorney to discuss the case. (Tr. 12). Once the meeting occurred in Attorney Lindsey's office, the Commonwealth Attorney told Attorney Lindsey that it was a situation where he theorized that the Defendant had hired the Co-Defendant in a capital murder in a murder for hire scheme. (Tr. 21).

Attorney Jerrauld Jones was the next counsel for the Co-Defendant, and Attorney Jones also met with the Commonwealth Attorney, even though Attorney Jones' name is not mentioned in the motion for sanctions. The Commonwealth Attorney conceded that Attorney Jones did

participate. (Tr. 32). Attorney Jones admitted that the Co-Defendant reneged upon his earlier plea agreement, which was motivated by the Commonwealth Attorney, Attorney Jones and the detectives. (Tr. 35). Attorney Jones proclaimed that when the Commonwealth Attorney came to his office on April 28, 1998, the Commonwealth Attorney did the talking and Attorney Jones did the listening. (Tr. 46). Attorney Jones went on to say "I did not agree at any time that Mr. McGhee had committed this. I didn't write this letter to me. Mr. Thomas wrote this letter to me. This is his language." (Tr. 46). Attorney Jones further testified that the Co-Defendant's statement in his possession at the April 28, 1998 meeting did not implicate anyone else in a murder for hire scheme. Attorney Jones went on to testify that in his nearly twenty (20) years as an Attorney, Commonwealth Attorneys always have their theories of the case, that the Commonwealth's Attorney's theory of the case as he recalled even then (April 28, 1998) was that the Co-Defendant was acting at the behest and under direction of Mr. Doss. (Tr. 47). After cross-examination, Attorney Jones admitted that the Co-Defendant wanted another attorney; however, Attorney Jones stated that the Co-Defendant never said that in open court under oath. (Tr. 57). Attorney Jones further testified that in withdrawing his motion to suppress, the Co-Defendant testified that he was told to cooperate. (Tr. 67).

Moreover, Attorney Jones testified "Mr. McGhee was urged to fabricate testimony against Mr. Doss by me and by the police, and by the Commonwealth's Attorney at a hearing on this motion to suppress in front of Judge James is my recollection, yeah." (Tr. 52-53).

During the motion hearing, the trial judge told the Appellant:

> "Mr. Brown, I'll let you continue. If you start getting argumentative, I'm not going to give you any warning. I'm going to cut you off and Mr. Hockaday takes over. I'm not going to sit here and listen to a lot of bickering. I had enough of that in the trial of this case." (Tr. 68).

The Commonwealth Attorney testified that no one told him that "fabricate" means to falsely develop, that he took that meaning from the context of the Appellant's motion. (Tr. 90). The Commonwealth Attorney further testified that even if the word "build" had been in the motion to replace "fabricate", the Commonwealth Attorney still may have reacted by filing a motion for sanctions. (Tr. 102-103).

The Appellant testified that he met with the Defendant in December 1999, and the Defendant had indicated to the Appellant that the Commonwealth Attorney had gone over to Attorney Lindsey's office in an effort to work on this murder for hire theory against the Defendant. (Tr. 115). The Appellant further testified that the Defendant gave the Appellant a letter written by the Commonwealth Attorney to Attorney Jones that took the Appellant for a loop. (Tr. 116). The trial judge stated he called the court reporter and said the word "support" as originally was put in there should be suborns. (Tr. 122). The Appellant, however, took the word as support not suborns. (Tr. 126). Further, the Appellant testified that "building a case around Mr. Doss, ...that was my meaning in that motion, and in that statement and that they were going to do everything they could in their power to make sure they built a case around them." (Tr. 128). Moreover, the Appellant testified that the letter from the Commonwealth Attorney to Attorney Jones, combined with what the Defendant had told the Appellant about what happened, was good enough for the Appellant.

During the sanctions hearing, there was no evidence presented as to any amount of expenses incurred by the Office of the Commonwealth's Attorney.

B. Proceedings Below

The Defendant was first indicted for capital murder for hire and related charges on May 16, 1998, in the Norfolk Circuit Court. In October 1998, shortly before the trial was to commence the Commonwealth Attorney nolle prossed the charges, and the Defendant was released from jail. Larry

Shelton, Esquire, represented the Defendant throughout the first indictment until the matters were nolle prossed.

The Defendant was re-indicted for capital murder for hire and related charges on November 3, 1999. In early December 1999, the Defendant retained the Appellant as lead counsel for the charges.

On January 24, 2000, the Appellant filed a motion to subpoena prior counsel of the Co-Defendant, among other motions. Shortly thereafter, the Commonwealth Attorney filed a motion for sanctions against the Defendant and the Appellant, for filing the motion to subpoena prior counsel of the Co-Defendant. On February 3, 2000, the Appellant withdrew his motion.

On February 24, 2000, the jury convicted the Defendant on first-degree murder as an accessory before the fact, and related charges, after an eight (8) day trial. The jury recommended a sentence of life plus thirty-eight (38) years, and the trial judge upheld the jury's recommendation.

On May 19, 2000, a hearing was held on the motion for sanctions, after which the trial judge sanctioned the Appellant Four Thousand and 00/100 Dollars ($4,000.00), pursuant to civil statute, § 8.01-271.1 of the Code of Virginia, 1950, as amended. The Appellant timely filed a Notice of Appeal to the ruling. The Court of Appeals dismissed the Petition for lack of jurisdiction, vice transferring the Petition to the Virginia Supreme Court, on December 19, 2000, February 2, 2001 and February 28, 2001. The Virginia Supreme Court affirmed the Virginia Court of Appeals' decision on June 1, 2001 and July 27, 2001.

REASONS FOR GRANTING THE PETITION

Pursuant to the Virginia Court of Appeals' Order of December 19, 2000, the Virginia Court of Appeals has no jurisdiction to entertain this appeal in context presented by

the petition. This matter was not transferred to the Virginia Supreme Court despite the fact that § 8.04-677.1 of the Code of Virginia, 1950, as amended, states:

> **Appeals filed in inappropriate appellant court**. -Notwithstanding any other provisions of this Code, no appeal which was otherwise properly and timely filed shall be dismissed for want of jurisdiction solely because it was filed in either the Supreme Court or the Court of Appeals and the appellate court in which it was filed thereafter rules that it should have been filed in the other court. In such event, the appellate court so ruling shall transfer the appeal to the appellate court having jurisdiction for further proceedings in accordance either the rules of the latter court. The parties shall be allowed a reasonable time to file such additional or amended pleadings as may be appropriate to proceed with the appeal in the appellate court to which the appeal is transferred. (1988, c. 382).

We strongly believe that a fine of $4,000.00 deriving out of a capital murder case is an appealable matter to the Virginia Court of Appeals or the Virginia Supreme Court. Since this is a criminal capital case, we believe that the trial judge was without jurisdiction to entertain a motion under § 8.01-271.1 of the Code of Virginia, 1950, as amended; therefore, his Order of May 23, 2000, was invalid, void and must be vacated.

Moreover, we feel strongly that the motion for sanctions was taken from within the context of the substantive case itself; therefore, the decision below was erroneous.

This case is timely and deserves consideration regarding a very fundamental right on which our Constitution is based. Namely, the due process right to be heard, which embodies a right to file motions and pleadings

essential to ensure that every defendant is given a fair opportunity to present a defense to the charges against him.

THE VIRGINIA COURT OF APPEALS SHOULD HAVE VACATED AND DISMISSED THE TRIAL JUDGE'S ORDER OF MAY 23, 2000, AS THE TRIAL JUDGE WAS WITHOUT JURISDICITION TO AWARD SANCTIONS IN A CIVIL CONTEXT

The Virginia Court of Appeals declares in it decision of December 19, 2000, that "the Court of Appeals is a creature of statute....and can only entertain appeals sanctioned by the General Assembly." In declining to entertain this matter, the Virginia Court of Appeals stated that "this appeal arises from the imposition of sanctions pursuant to the Code of Virginia, 1950, as amended, (civil statute), § 8.01-271.1." The Virginia Court of Appeals went on to state that "the Code of Virginia does not authorize appeals to its court from such an order taken outside the context of the substantive case itself." Nevertheless, the Virginia Court of Appeals waited nearly five (5) months to rule that the Virginia Court of Appeals was without jurisdiction to entertain this matter. The underlined case is a criminal capital murder. The Virginia Court of Appeals failed to transfer this matter to the Virginia Supreme Court in a timely manner, thereby denying the petitioner his constitutional right to be heard. The appeal was timely filed in the Virginia Court of Appeals. The decision of the Virginia Court of Appeals, and the affirmation of the Virginia Supreme Court, are erroneous and must be dismissed.

Accordingly, the decision of the Virginia Court of Appeals centered around a criminal context vice a civil matter. The Virginia Court of Appeals should have dismissed the trial judge's Order of May 23, 2000, but instead declared that the Virginia Court of Appeals is without jurisdiction to render the appropriate disposition of the matter. This Court should grant Mr. Brown's petition and reverse the decision of the lower courts.

THE QUESTIONS PRESENTED ARE IMPORTANT

The Virginia Court of Appeals by its Order of December 19, 2000 (App. 5), states that "the Code of Virginia does not authorize appeals to this court from such an order taken outside the context of the substantive case itself."

In this present case, the Virginia Court of Appeals received the record of this matter on August 7, 2000, and waited nearly five (5) months on December 19, 2000, to dismiss this petition for appeal for lack of jurisdiction to entertain the matter in context presented to them. (App. 5).

We disagree that the motion to subpoena prior counsel of the Co-Defendant is outside the context of the substantive case itself. We strongly believe that the Virginia Court of Appeals delay in addressing this fact denied the Appellant his due process right of the opportunity to be heard in the Virginia Supreme Court. Had the Virginia Court of Appeals not delayed in making a decision for nearly five (5) months, the Appellant could have filed an appropriate petition for appeal with the Virginia Supreme Court in a timely manner. The case as it stands now, represents an appeal from the Virginia Court of Appeals, which by its Order of December 19, 2000, declared that the Virginia Court of Appeals did not have jurisdiction to entertain this petition for appeal in its present forum.

Moreover, the timing for filing a petition for appeal to the Virginia Supreme Court is within three (3) months of the final order of the Circuit Court pursuant to Rule 5:17(a)(1) of the Code of Virginia, 1950, as amended.

For these reasons, we strongly feel that the Virginia Court of Appeals denied the Appellant his due process rights of an opportunity to be heard by the Virginia Court of Appeals' failure to transfer this petition for appeal to the Virginia Supreme Court.

In *Holt, et al. v. Virginia*, 381 U.S. 131, ___ (1965), after the libel case was dismissed by agreement, a Virginia Circuit Court judge met with both counsel in this chambers to inquire of counsel for the Defendants, on three (3) occasions, if he had anything to do with making the Defendants in the libel suit unavailable to be served with subpoenas. Counsel for the Defendants refused to answer and the Circuit Court judge directed the Commonwealth's Attorney to prepare an order directing counsel for the Defendants to show cause why he should not be held in contempt. Counsel for the Defendants then asked that the Circuit Court judge recuse himself from trying the contempt charge and the Circuit Court judge denied the motion. Subsequently, counsel for the Defendants filed a motion to change venue, stating among other things, that counsel for the Defendants could not get a fair trial because of the prejudice of the Circuit Court judge. *Id.* The Circuit Court judge denied the motion to change venue, and later found the counsel for the Defendants in contempt and fined him $50.00. The conviction was affirmed in the Virginia Supreme Court of Appeals (now Virginia Supreme Court), and counsel for the Defendant appealed to the United States Supreme Court. The United States Supreme Court reversed and remanded and ruled that counsel for the Defendants had been punished by Virginia for doing nothing more than exercising the constitutional right of an accused and his counsel to defend against charges made. *Id.* at ___.

Here in this case at hand, Appellant met with his client for five (5) hours (Tr. 115) and was told by his client that the Commonwealth Attorney had gone over to Attorney Lindsey's office in an effort to work on this murder for hire theory against the Defendant. (Tr. 115). Further, the Defendant had given the Appellant a letter from the Commonwealth Attorney to Attorney Jones, dated May 1, 1998, concerning a meeting between the Commonwealth Attorney and Attorney Jones regarding implicating the Defendant in a capital murder for hire case. (Tr. 116). A fair trial in a fair tribunal is a basic requirement of due process. *In re: Murchison*, 349 U.S. 133, 136, ( ). Here, the Appellant has a legal obligation to his client to present the best defense

possible and raise all relevant issues including a motion to subpoena prior counsel of a Co-Defendant, where the Commonwealth Attorney has met privately with prior counsel of a Co-Defendant in the latter's office to discuss a murder for hire against the Defendant, before an indictment was obtained against the Defendant.

Federal Rule II(C)(1)(a) of the Federal Rules of Civil Procedure states in part that as a safe harbor to avoid sanctions, the pleading must be withdrawn within twenty-one (21) days after the filing. In this present case, the motion was withdrawn within ten (10) days of the filing, and no hearing was ever held on the motion to subpoena prior counsel of the Co-Defendant.

Rule 3A:9(3) of the Rules of the Virginia Supreme Court states as follows:

> **Form of Motion**. Any motion made before trial shall be in writing if made in a circuit court, unless for good cause shown permits an oral motion. A motion shall state with particularity the ground or grounds on which it is based.

On the other hand, § 8.01-271.1 of the Code of Virginia, 1950, as amended, states:

> "...If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including reasonable attorney's fees."

Based on the clear language of these statutes, the trial judge had no jurisdiction in a capital murder criminal trial to

entertain a motion for sanctions, under § 8.01-271.1 of the Code of Virginia, 1950, as amended. In this case, the trial judge cites in his Order, *Cardinal Holding Company v. Deal*, 258 Va. 623, 522 S.E.2d 614, 620 (1999); at best, disingenuous. Clearly, *Cardinal Holding Company v. Deal* is a civil case and is appropriately decided pursuant to the civil statute. The case at bar is a capital murder criminal case, and thus, must be decided accordingly to the criminal statute.

§ 15.2-1627(A) of the Code of Virginia, 1950, as amended, states as follows:

> **Duties of attorney for the Commonwealth and their assistants.** – A. No attorney for the Commonwealth, or assistant attorney for the Commonwealth, shall be required to carry out any duties as part of this office in a civil matter of advising the governing body and all boards, departments, agencies, officials and employees of his county or city; of drafting or preparing county or city ordinance; of defending or brining actions in which the county or city, or any of its boards, departments or agencies, or officials and employees thereof, shall be a party; or in any other manner advising or representing the county or city, its boards, departments, agencies, officials, and employees, except in matters involving the enforcement of the criminal law within the county or city.

Clearly, this statute does not authorize any duty of the Commonwealth Attorney to file a motion for sanctions under § 8.01-271.1 of the Code of Virginia, 1950, as amended.

CONCLUSION

The petition for a writ certiorari should be granted.

Respectfully submitted,

Chester L. Smith, Jr.
5441 Virginia Beach Blvd.
Suite 110
Virginia Beach, VA 23462
(757) 490-3181
Counsel for Petitioner Curtis T. Brown

Of Counsel:

Curtis T. Brown
555 Fenchurch Street
Suite 306
Norfolk, VA 23510
(757) 622-5444

CONTENTS OF APPENDIX

Order of Sanctions, Norfolk Circuit Court . . . . . App. 1

Order of Virginia Court of Appeals, dated December 19, 2000 . . . . . App. 5

Order of Virginia Court of Appeals, dated February 2, 2001 . . . . . App. 6

Order of Virginia Court of Appeals, dated February 28, 2001 . . . . . App. 7

Order of Virginia Supreme Court, dated June 1, 2001 . . . . . App. 8

Order of Virginia Supreme Court, dated July 27, 2001 . . . . . App. 9

APPENDIX

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA

v. Criminal Docket No.: CR99004997

JERMAINE S. DOSS

ORDER

This matter came again to be heard the 19th day of May, 2000, on the Commonwealth's motion for sanctions against Curtis T. Brown and Jermaine S. Doss. The Commonwealth appeared by S. Catherine Dodson, its Deputy Commonwealth's Attorney. Mr. Brown appeared in person and by counsel, Chester L. Smith. The Court previously heard argument on the motion for sanctions on February 2, 2000, and it took the matter under advisement to hear testimony.

At the beginning of the hearing the Commonwealth withdrew its motion against Mr. Doss, and the motion for sanctions proceeded against only Mr. Brown. The Court heard testimony *ore tenus*, and it finds as follows.

On January 24, 2000, Mr. Brown signed and filed a motion in this case entitled "Motion to Subpoena Prior Counsel of Co-Defendant, Nathaniel McGhee" (the "Motion") which in pertinent part, stated:

> COMES NOW, the Defendant, Jermaine S. Doss, by counsel, and moves this Honorable Court for permission to subpoena Joseph Lindsey, Esquire, and Jerrauld Jones, Esquire, to testify:
>
> 1) that Norman Thomas, Esquire contacted them for help in fabricating a case against the Defendant; .....

Before filing the Motion Mr. Brown spoke to neither Mr. Lindsey nor Mr. Jones. Had Mr. Brown spoken to them he would have learned that Mr. Thomas never asked either of them to assist him in presenting false evidence in this case. Mr. Brown, however, did not care about the truth or falsity of his allegation. Mr. Lindsey's testimony established that Mr. Brown filed the Motion to harass Mr. Thomas.

The filing of the Motion falsely accused Mr. Thomas of solicitation of perjury or attempting to suborn perjury, felonies under Code of Virginia §§ 18.2-436, 18.2-26, 18.2-29. It also falsely accused Mr. Lindsey and Mr. Jones of violations of Rules 3.3(d) and 8.3(a) of the Virginia Code of Professional Responsibility and misprision of a felony, a misdemeanor at common law. 4 Blackstone, Commentaries on the Laws of England 121; 1 Hale, History of the Pleas of the Crown 374; Hening, Virginia Justice 292 (1825); Code of Virginia §§ 1-10, 18.2-12. Such conduct by a member of the Bar is outrageous and intolerable.

Mr. Brown claimed at the hearing that by using "fabricate" he meant "build." However, the common understanding of the meaning of "fabricate" in legal proceedings is the creations of falsehood. Furthermore, Mr. Brown's use of the word "fabricated" in paragraph 5 of his "Motion to set aside the Jury Verdict" filed on May 2, 2000, can only be construed to mean the creation of falsehood. Defining "fabricated" there as "built" would make no sense whatsoever.

The conclusion that Mr. Brown used "fabricate" in the Motion to mean the creation of falsehood is strengthened by excerpts from Mr. Brown's closing argument to the jury:

> "Now, the truth to (sic) the matter is Mr. McGhee, he tells you that the man put the phone on the bed. That's what he tells you, the phone was on the bed. Now, you get the untruth, the coverup from all those detectives and all those forensic examiners and say (sic) they ain't (sic) see no (sic) phone on no (sic) bed at all....

***

Then Ladies and Gentlemen, let me speed up a little bit and we'll get to these detectives, Detective Norrell and Detective Everett, prosecutor's mens (sic), that's what they are. Oh yeah, they want to help him make his case, manufacture a case. If we don't have one, so we'll manufacture one. We'll make a capital case....."

"Manufacture," as Mr. Brown used it in his argument, can hardly be understood to mean "build through good detective work."

Mr. Brown's defense to the motion for sanctions was, at best, disingenuous.

Mr. Brown violated Code of Virginia § 8.01-271.1 by filing the Motion, and his conduct warrants a sanction that both punished him and compensates the Commonwealth's Attorney's Office for filing and presenting the sanctions motion. Cardinal Holding Company v. Deal, 258 Va. 623, 632, 522 S.E.2d 614, 620 (1999).

It is therefore ORDERED that Curtis T. Brown pay a monetary sanction of Four Thousand Dollars ($4,000.00) to the Norfolk Commonwealth's Attorney's Office at the rate of One Thousand Dollars ($1,000.00) per month beginning June 1, 2000, and continuing on the first business day of each succeeding month until paid; provided, however, that should Mr. Brown appeal this order, and should the sanction be affirmed on appeal, the first payment shall be due on the first business day of the first month after the sanction becomes final and unappealable.

It is further ORDERED that the Norfolk Commonwealth's Attorney's Office shall promptly notify the Court if Mr. Brown fails to comply with this order.

The Clerk shall send copies of this order to S. Catherine Dodson, Norman A. Thomas, Joseph C. Lindsey, Jerrauld Jones, Curtis T. Brown, Chester L Smith, and

James O. Broccoletti. The Clerk shall also mail a copy of this order to Barbara Williams, counsel for the Virginia State Bar.

Endorsements are waived pursuant to Rule 1:13.

ENTER: May 23, 2000

/s/ Everett A. Martin, Jr.
JUDGE

A COPY TESTE:
ALBERT TEICH, JR., CLERK
NORFOLK CIRCUIT COURT
BY /s/ Donna M. Fasanaro
Deputy Clerk authorized to sign
on behalf of Albert Teich, Jr.
Date: 05/23/00
Donna M. Fasanaro

VIRGINIA: In the Court of Appeals of Virginia on Tuesday the 19th day of December, 2000

Jermaine S. Doss, Appellant,

against Record No. 1471-00-1
Circuit Court No. CR99004997

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Norfolk

Attorney Curtis T. Brown appeals the circuit court's imposition of sanctions against him for his conduct within the context of his representation of Jermaine S. Doss. The circuit court sanctioned Brown by order entered May 23, 2000. This appeal challenges the circuit court's order of sanctions against Brown. Doss' appeal of this conviction is contained in a separate appeal.

The Court of Appeals is a creature of statute. This Court can only entertain appeals as sanctioned by the General Assembly. This appeal arises from the imposition of sanctions pursuant to Code § 8.01-271.1. The Code of Virginia does not authorize appeals to this Court from such an order taken outside the context of the substantive case itself. This appeal does not arise from a finding of contempt. Code § 19.2-318. Nor is this appeal taken from a "final conviction in a circuit court of a traffic infraction or a crime . . . ." Code § 17.1-406(A).

Accordingly, we have no jurisdiction to entertain this appeal in the context presented to us. Therefore, we dismiss the appeal.

This order shall be certified to the trial court.

A Copy,
Teste: /s/ Cynthia L. McCoy
Clerk

VIRGINIA: In the Court of Appeals of Virginia on Friday the 2nd day of February, 2001

Jermaine S. Doss, Appellant,

against Record No. 1471-00-1
Circuit Court No. CR99004997

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of attorney Curtis T. Brown, Esq., trial counsel for the appellant, to set aside the judgment rendered herein on the 19th day of December, 2000 and grant a rehearing thereof, the said petition is denied.

A Copy,

Teste:
Cynthia L. McCoy, Clerk
By: /s/ Deputy Clerk

VIRGINIA: In the Court of Appeals of Virginia on Wednesday the 28th day of February, 2001.

Jermaine S. Doss, Appellant,

against Record No. 1471-00-1
Circuit Court No. CR99004997

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing En Banc

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 2nd day of February, 2001 and grant a rehearing en banc thereof, the said petition is dismissed as it was not timely filed pursuant to Rule 5A:34.

A Copy,
Teste: Cynthia L. McCoy, Clerk
By: /s/ Deputy Clerk

VIRGINIA: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 1st day of June, 2001.

Jermaine S. Doss, Appellant,

against Record No. 010503
Court of Appeals No. 1471-00-1

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,
Teste: David B. Beach, Clerk
By: /s/ Deputy Clerk

VIRGINIA: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 27th day of July, 2001.

Jermaine S. Doss, Appellant,

against Record No. 010503
Court of Appeals No. 1471-00-1

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 1st day of June, 2001 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,
Teste: /s/ David B. Beach
Clerk